



MINUTES

**CITY OF SCOTTSDALE FIRE LOCAL BOARD OF THE
PUBLIC SAFETY PERSONNEL RETIREMENT SYSTEM (PSPRS)
REGULAR MEETING
10:00 a.m., Thursday, March 15, 2012
Human Resources Verde Conference Room
7575 E. Main Street
Scottsdale, Arizona 85251**

PRESENT: Jack Cross, Chairman/Mayoral Designee
Todd Caverner, Elected Member
Velicia McMillan, Citizen Member/Merit Head
Steve Springborn, Elected Member

ABSENT: Jeffrey Burg, Citizen Member

STAFF: Ken Nemec
Chanda Washington

OTHERS: Hannah Auckland, Esq.
Fire Captain Robert D. Curley, Jr.
Steve Newcomer, Public

Call to order

Chairman Cross called the meeting to order at 10:05 a.m. He stated that the first order of business was the acknowledgement of Board Member Burg's excused absence.

Roll call

A formal roll call confirmed the members present as stated above.

1. Review and approval of meeting minutes—February 16, 2012

Board Member Springborn requested that the third paragraph of page 3 of the February 16, 2012 minutes be corrected to reflect that the NFPA 1582 was in effect well before the City of Scottsdale Fire Department was established.

BOARD MEMBER CAVNER MOVED TO APPROVE THE REGULAR MEETING MINUTES OF THE FEBRUARY 16, 2012 PSPRS FIRE LOCAL BOARD MEETING AS AMENDED. BOARD MEMBER MCMILLAN SECONDED THE MOTION, WHICH CARRIED BY A VOTE OF FOUR (4) TO ZERO (0). BOARD MEMBER BURG WAS ABSENT.

2. Review and approval of executive session meeting minutes—February 16, 2012

BOARD MEMBER SPRINGBORN MOVED TO APPROVE THE EXECUTIVE SESSION MEETING MINUTES OF THE FEBRUARY 16, 2012 PSPRS FIRE LOCAL BOARD MEETING AS PRESENTED. BOARD MEMBER CAVNER SECONDED THE MOTION, WHICH CARRIED BY A VOTE OF FOUR (4) TO ZERO (0). BOARD MEMBER BURG WAS ABSENT.

3. Induction of new Scottsdale firefighters into PSPRS

Mr. Nemec reported that Firefighter Christian McDaniel was hired on February 27, 2012 with no pre-existing conditions noted.

Chairman Cross stated that it was nice to see the City adding new firefighters.

BOARD MEMBER SPRINGBORN MOVED TO APPROVE THE INDUCTION OF NEW SCOTTSDALE FIREFIGHTER CHRISTIAN MCDANIEL INTO PSPRS WITH AN EFFECTIVE DATE OF FEBRUARY 27, 2012, AND WITH PRE-EXISTING CONDITIONS, IF ANY, AS NOTED ON THE ATTACHED LISTING. BOARD MEMBER MCMILLAN SECONDED THE MOTION, WHICH CARRIED BY A VOTE OF FOUR (4) TO ZERO (0). BOARD MEMBER BURG WAS ABSENT.

4. Discussion and Vote on the Accidental Disability Retirement Application of Fire Captain Robert D. Curley, Jr.

Ms. Washington explained that after the February 16, 2012 Board meeting, Fire Captain Robert D. Curley, Jr. requested to review the figures for a possible accidental disability retirement to be filed on his behalf.

She stated that for estimate purposes staff chose the end of May 2012 as an arbitrary date in order to print out a draft accidental disability retirement application for Fire Captain Curley's review, noting that he has decided to move forward with his application during today's Board meeting.

In response to Chairman Cross' inquiry regarding whether the Applicant had any further comments or documentation to present to the Board, Fire Captain Curley stated that he had not brought anything else with him

Board Member Springborn requested that the Board adjourn into executive session in order to obtain legal counsel.

CLOSED PUBLIC HEARING

5. **Motion to Recess into Executive Session for Discussion of the Accidental Disability Retirement Application of Fire Captain Robert D. Curley, Jr.**

BOARD MEMBER CAVNER MOVED TO RECESS INTO EXECUTIVE SESSION FOR DISCUSSION OF FIRE CAPTAIN ROBERT D. CURLEY, JR.'S ACCIDENTAL DISABILITY RETIREMENT APPLICATION. BOARD MEMBER SPRINGBORN SECONDED THE MOTION, WHICH CARRIED BY A VOTE OF FOUR (4) TO ZERO (0). BOARD MEMBER BURG WAS ABSENT.

RECONVENE PUBLIC SAFETY PERSONNEL RETIREMENT SYSTEM MEETING FOLLOWING EXECUTIVE SESSION

4. **Discussion and Vote on the Accidental Disability Retirement Application of Fire Captain Robert D. Curley, Jr. (Continued)**

Board Member Springborn made a motion that the medical information packet being sent to the Board's IME physician exclude all reports made by the City's previous IME physician Dr. Tamm as well as any documentation by Mr. Tonda or Dr. Dashefsky referencing those reports, and the motion was seconded by Board Member Cavner.

In response to Chairman Cross' inquiry regarding the reason for the City's separate IME, Board Member Springborn recalled that the IME was based on a request for a return to duty note from Fire Captain Curley's personal physician.

Board Member Springborn summarized that according to the medical records Fire Captain Curley's physician gave him return to duty clearance and Dr. Dashefsky was not satisfied with his physician's opinion and thereafter sent him for an IME. Dr. Dashefsky was not satisfied with Dr. Tamm's initial report and had a follow-up conversation with him which resulted in a supplemental report reflecting a change in his opinion.

Board Member Springborn opined that Dr. Dashefsky was shopping for an answer which was unacceptable behavior. He opined that the Board's IME should provide a true independent evaluation without being influenced by Dr. Tamm's reports or by Mr. Tonda's or Dr. Dashefsky's documentation referencing those IME reports.

Chairman Cross suggested that staff not exclude any medical records or documentation in the packet being sent to the Board's IME physician. He directed Board Member Springborn to locate the specific page numbers of the doctor's summary opinion he was referencing to ensure that important information was not left out.

Ms. Auckland explained that the Board must obtain the Applicant's authorization to exclude any documentation from the packet being sent to its IME physician. She proceeded to swear in the witness so that he could participate in the discussion.

Chairman Cross summarized that there was concern that portions of the prior IME physician's reports were more of an opinion, rather than being based on hard evidence and should therefore be eliminated from the packet being sent to the Board's IME physician.

Board Member Springborn informed Fire Captain Curley that has the right to provide any type of medical documentation to the Board's IME physician. He opined that the packet of information should exclude the City's prior IME physician Dr. Tamm's reports as well as Mr. Tonda and Dr. Dashefsky's documentation referencing those reports since it appears that Dr. Dashefsky was shopping for a specific answer which Dr. Tamm provided in his supplemental report.

Fire Captain Curley recalled that Dr. Tamm's report had a negative influence on his work status and resulted in his separation scheduled for April 2012. He explained that his medical documentation includes everything from his personal physician, Occupational Health Care, Dr. Tamm, and Dr. Dashefsky.

Chairman Cross expressed his concern that if the Board's IME recommends that the Applicant return to work, which was contrary to Dr. Dashefsky's recommendation that he separate from work, then he may become ineligible for retirement benefits as well as being precluded from returning to work.

Discussion ensued regarding the NFPA 1582 being included in the IME medical documentation packet.

Chairman Cross inquired whether Fire Captain Curley authorized the Board to exclude Dr. Tamm's correspondence from the medical packet being sent to its IME physician.

Fire Captain Curley stated that he was unclear about the best way to proceed with his case. He explained that the City already decided to medically separate him on April 19, 2012, noting that the Board's IME would probably have no effect on that decision.

In response to Chairman Cross' comment that if given a choice the Applicant would rather continue working in his current position than being medically separated, Fire Captain Curley responded that although he would prefer to maintain his employment as the Fire Captain, he has been informed that there are no employment opportunities available to him at this time.

Fire Captain Curley said that the Board's IME physician would ask him about his prior medical history, and since he was a truthful person he would eventually divulge Dr. Tamm's IME exam and report.

Board Member McMillan stated that she was uncomfortable excluding Dr. Tamm's medical summation as well as Dr. Dashefsky and Mr. Tonda's correspondence relating to that IME from the medical documentation packet.

In response to Board Member Cavner's inquiry regarding whether the Board's IME physician's opinion would supersede the City's IME physician's opinion, Chairman Cross said it would not.

Board Member McMillan elaborated that the question being addressed was whether Fire Captain Curley would be advantaged or disadvantaged by Dr. Tamm's documentation being left out of the medical packet to the Board's IME physician. She stated that the employment portion of the discussion was a moot issue.

Board Member McMillan recommended that all documentation related to Dr. Tamm's reports be included in the information packet being sent to the Board's IME physician since it already establishes that the Applicant cannot return to work due to medical issues. She pointed out that the Board's IME needs to determine whether the Applicant's illness was exacerbated by his job duties.

Board Member Springborn amended his motion to restrict all communication by the Board's IME physician to occur only between them and City staff regarding Fire Captain Curley's case, and Board Member Cagner seconded the motion.

Board Member Springborn noted that the Board's current IME physician was an orthopedic specialist, noting that there was a need to select a neurologist for Fire Captain Curley's IME.

Ms. Washington explained that staff has located past IME physicians through Medical Consultants Network. The City of Phoenix and Town of Gilbert PSPRS boards also use Medical Consultants Network as their IME referral service.

Chairman Cross directed staff to work with legal counsel on improving the Board's letter and list of questions which are sent to their IME as well as including the new questionnaire required by the Fund Manager's Office.

BOARD MEMBER SPRINGBORN MOVED TO REQUEST THAT THE IME PHYSICIAN BE DIRECTED TO RESTRICT ALL COMMUNICATIONS TO OCCUR ONLY BETWEEN HIMSELF AND CITY STAFF IN THIS MATTER. BOARD MEMBER CAVNER SECONDED THE MOTION, WHICH CARRIED BY A VOTE OF FOUR (4) TO ZERO (0). BOARD MEMBER BURG WAS ABSENT.

BOARD MEMBER MCMILLAN MOVED TO APPROVE THE ISSUANCE OF AN INDEPENDENT MEDICAL EXAMINATION FOR THE APPOINTMENT OF A MEDICAL SPECIALIST TO SERVE AS THE MEDICAL BOARD FOR THE APPLICATION OF FIRE CAPTAIN ROBERT D. CURLEY, JR. BOARD MEMBER CAVNER SECONDED THE MOTION, WHICH CARRIED BY A VOTE OF FOUR (4) TO ZERO (0). BOARD MEMBER BURG WAS ABSENT.

(Recess from 11:05 a.m. to 11:11 a.m.)

6. Discussion and Vote on the Accidental Disability Retirement Application of Firefighter Dart F. Craytor

Ms. Washington reported that Firefighter Dart F. Craytor was applying for an accidental disability retirement as a result of incurring an injury to his lower back and one of his legs.

She stated that there was supposed to be a representative attending today's meeting on the Applicant's behalf since he had an appointment for a medical procedure scheduled for the same time frame.

Ms. Washington recalled that Firefighter Craytor's injuries initially occurred in February of 2011 with numerous flare-ups occurring thereafter, influencing his decision to apply for an accidental disability retirement.

In response to Chairman Cross' inquiry regarding where the 15.7 years of prior service listed in the Applicant's documentation came from, Ms. Washington stated that he purchased random service from the Bullhead City Fire Department.

Board Member Cavner recalled that the specifics of Firefighter Craytor's accident were far less complicated than Fire Captain Curley's case.

BOARD MEMBER CAVNER MOVED TO APPROVE THE ISSUANCE OF AN INDEPENDENT MEDICAL EXAMINATION FOR THE APPOINTMENT OF A MEDICAL SPECIALIST TO SERVE AS THE MEDICAL BOARD FOR THE APPLICATION OF FIREFIGHTER DART F. CRAYTOR. BOARD MEMBER SPRINGBORN SECONDED THE MOTION, WHICH CARRIED BY A VOTE OF FOUR (4) TO ZERO (0). BOARD MEMBER BURG WAS ABSENT.

CLOSED PUBLIC HEARING

7. Motion to Recess into Executive Session for Discussion of the Accidental Disability Retirement Application of Firefighter Dart F. Craytor

Chairman Cross deemed it unnecessary to recess into executive session.

RECONVENE PUBLIC SAFETY PERSONNEL RETIREMENT SYSTEM MEETING FOLLOWING EXECUTIVE SESSION

8. Board suggestions for upcoming agenda items

Mr. Nemec stated that Board Members Cavner and Springborn were coming up for renewal in June of 2012.

Board Member Springborn opined that their reappointments were staggered and he should be the only one scheduled for renewal in June of 2012.

Mr. Nemec agreed to contact the Fire Department and the City Clerk's office to establish dates of the last elections and determine whose term is expiring. Mr. Nemec also commented that perhaps there was an election that should have taken place a year or two ago that in fact did not take place.

Chairman Cross explained that an Elected Member serves until their successor was qualified to replace them and as long as no one has been elected as Board Member Cavner's replacement, everything should be fine.

Mr. Nemec reported that the Fire Local Board meeting location would be transitioning from HR to the Fire/Police Headquarters starting in April 2012.

Board Member Springborn suggested that the memo regarding legal standards governing causation and medical certainty within the PSPRS statutes presented by

legal counsel during today's executive session be agendaized for standardization into the Board's guidelines for accidental disability cases during its April 2012 meeting.

ADJOURNMENT:

With no further business to discuss, being duly moved and seconded, the meeting adjourned at 11:19 a.m.

Respectfully Submitted by:

REVIEWED BY:

Ken Nemec
PSPRS Fire Local Board Secretary

Jack Cross
PSPRS Chairman/Mayoral Designee